

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:05-cr-269

UNITED STATES OF AMERICA

vs.

DAMIEN McCREE

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ORDER

**THIS MATTER** is before the Court upon motion of the defendant pro se for a reduction of sentence based on the retroactive amendments to the United States Sentencing Guidelines relating to crack cocaine triggered by the Fair Sentencing Act of 2010 (Doc. No. 5; ) and notice by his counsel stating he is not eligible for such relief (Doc. No. 40).

On November 6, 2006, the defendant was sentenced to 60 months' imprisonment on Count One pursuant to the mandatory minimum sentence prescribed in 21 U.S.C. § 841(b)(1)(B), based on his guilty plea to possessing with intent to distribute 5 grams or more of a mixture and substance containing cocaine base. (Doc. No. 1: Indictment; Doc. No. 23: Plea Agreement; Doc. No. 33: Judgment). Accordingly, the change in the guidelines does not affect the defendant's sentence. Neal v. United States, 516 U.S. 284, 296 (1996) (retroactive amendment to guidelines does not alter statutory mandatory minimum); United States v. Hood, 556 F.3d 226, 233 (4th Cir. 2009).

**IT IS, THEREFORE, ORDERED** that the defendant's motion is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: March 2, 2012

A handwritten signature in dark ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
Chief United States District Judge

